

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-219716 DATE: August 19, 1985

MATTER OF: S & W Enterprises, Inc.

DIGEST:

Contracting officer may properly reject a hand-carried bid as late when the protester marks an interior bid envelope with the solicitation number, date, and time of bid opening, but sends it through Federal Express in an overnight letter pouch that is not marked as a bid and bid, although timely delivered to a central receiving section, does not arrive in the depository for hand-carried bids until after opening. In such a case, the protester has contributed to the lateness of the bid.

S & W Enterprises, Inc., protests the rejection of its bid as late under invitation for bids (IFB) No. DAHA19-85-B-0004, issued by the National Guard Bureau, Natick, Massachusetts. The agency sought bids for rustproofing military tactical vehicles.

We dismiss the protest.^{1/}

According to the protester, the IFB instructed bidders to deliver hand-carried bids to the depository in the office of the U.S. Property and Fiscal Officer or to mail bids to the U.S. Property and Fiscal Officer, MA, N.G. Supply Depot, 143 Speen Street, Natick, MA 01760-2599, before the bid opening at 11 a.m. on June 19, 1985. The IFB also advised bidders to mark the bid envelope with the solicitation number and the date and time set for bid opening.

S & W included all the required information on its bid envelope, which it addressed to the contracting officer. However, it then dispatched the bid via Federal Express, which placed it in an overnight letter pouch. Although this too was addressed to the contracting officer and marked urgent, it did not otherwise indicate that it

^{1/} The protester initially complained to the contracting agency, which had taken no action on the protest by the time it was filed with our Office.

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contained a bid. Federal Express delivered the pouch to the central receiving section on the morning of the bid opening. The central receiving section did not forward the bid to the contracting officer until 3 p.m. that day.

After learning that Federal Express records established the time of the bid's delivery to the central receiving section as 10:06 a.m., the contracting staff opened the bid and determined that S & W was the low bidder. The contracting officer later rejected the bid as nonresponsive because it had arrived late at the depository and did not comply with the late bid provisions of the Federal Acquisition Regulation, 48 C.F.R. § 52.214-7 (1984).

S & W contends that the Federal Express overnight pouch indicated a need for timely forwarding and claims that Federal Express was not permitted to hand-deliver the bid to the contracting officer. S & W also argues that once the Federal Express delivery person left the bid at the central receiving section, the agency completely controlled delivery of the bid, and S & W had fulfilled its responsibility by placing it as far as permitted in the stream of commerce. In this regard, S & W asserts that once Federal Express delivered the pouch to the central receiving section, that section was the government's agent for purposes of delivery to the proper place. Finally, S & W alleges that the central receiving section had enough time to relay the bid to the contracting officer before bid opening, but government mishandling of the bid caused its late receipt.

A bidder is responsible for delivering its bid to the office designated for receipt of bids by the specified time. J.E. Steigerwald Co., Inc., B-218536, Apr. 19, 1985, 85-1 CPD ¶ 453. Receipt elsewhere, including the agency mailroom or a central receiving area, as a general rule is insufficient and renders the bid late. American McGaw Division, American Hospital Supply Corp., B-217415, Mar. 26, 1985, 85-1 CPD ¶ 351.

We have allowed the contracting officer to consider a late hand-carried bid (which a bid delivered by commercial carrier is considered to be) if the government's wrongful or improper action was the paramount cause for the bid's late arrival and if consideration of the bid would not otherwise compromise the integrity of the competitive system. J.E. Steigerwald Co., Inc., supra. However, we

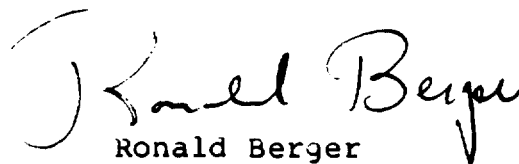
also have held that a contracting officer should reject a late hand-carried bid if the bidder did not act reasonably in delivering the bid and thus significantly contributed to its late receipt. Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 CPD ¶ 332.

In our opinion, S & W significantly contributed to the delay in delivering the bid to the depository for hand-carried bids. Except for the name of the addressee, the Federal Express pouch was not marked to alert central receiving section personnel that the package was a bid requiring immediate delivery to the depository. The use of an overnight delivery service or an "urgent" label is not sufficient notice that the material being delivered is a bid that must meet a particular deadline.

Further, S & W and/or its agent was responsible for delivering the hand-carried bid directly to the depository. The IFB did not designate the central receiving section as an agent for accepting and relaying hand-carried, as opposed to mailed, bids.

Accordingly, we conclude that S & W's failure to mark and address the bid envelope properly, not government mishandling, was the paramount cause for the late arrival of S & W's hand-carried bid. Therefore the contracting officer properly rejected the bid as late.

S & W does not state a valid basis for protest. Consequently, pursuant to 4 C.F.R. § 21.3(f) (1985), the protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel